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January 9, 1970

TO COUNTY ASSESSORS:

**"OPEN-SPACE LANDS" INCLUDE  
TAXABLE FRUIT-BEARING AND NUT-BEARING  
TREES AND VINES**

We are enclosing a copy of the Attorney General's opinion on the treatment of fruit-bearing or nut-bearing trees and vines as land in appraising under open-space legislation.

As you recall, the 1969 Legislature added Section 429 to the Revenue and Taxation Code. This section designated taxable fruit-bearing and taxable nut-bearing trees and vines as land for appraisal purposes. The Attorney General's conclusion is that the term "open-space lands" includes these taxable trees and vines as land for appraisal purposes. Man-made improvements are not included in the definition of "open-space lands."

Tree and vine values should be placed in the improvement column on the assessment roll.

Sincerely,

*Jack F. Eisenlauer*

Jack F. Eisenlauer, Chief  
Assessment Standards Division

JFE/msd  
Attachment

THOMAS C. LYNCH  
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Mr. Herbert F. Freeman

2. December 17, 1969

preserve, conserve and otherwise continue in existence "open space lands for the production of food and fiber." Section 2 of this constitutional provision authorizes the Legislature to define such open space lands. The rule of the Forster case would not be here applicable since there is no established meaning for the term "open space lands" or for "open space lands for the production of food and fiber." Indeed, even the term "land" itself taken alone does not have a fixed meaning. See Krouser v. County of San Bernardino, 29 Cal. 2d 766 (1947). Accordingly, in ascertaining the meaning of the constitutional provision, consideration must be given to the intent of the Legislature and the People of the State of California in adopting Article XXVIII.

Although the matter is not free from doubt, in view of the general presumption of the validity of acts passed by the Legislature, it is our view that the California appellate courts would hold that the enactment of section 429 as added by chapter 862 of the Statutes of 1969 constituted a valid exercise of the authorization granted to the Legislature under Article XXVIII of the California Constitution. In that regard it would appear that fruit-bearing or nut-bearing trees and vines are so intimately connected with the use of open space lands for the production of food and fiber that the Legislature could properly treat them as part of the open space lands for purposes of applying a special valuation formula thereto.

Our conclusion would not affect the treatment of such trees and vines as improvements on the assessment roll as required by section 105(b) of the Revenue and Taxation Code which implements Article XIII, section 2 of the California Constitution. There is no inherent inconsistency between regarding such trees and vines as covered by the term "open space lands for the production of food and fiber" under Article XXVIII and as being improvements for the purposes of placing them on the assessment roll.

We feel it appropriate to point out that there would appear to be a distinction between products of the land, such as trees and vines on the one hand, and man-made

Mr. Herbert F. Freeman

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